

OGC 77-0435
19 January 1977

25X1A MEMORANDUM FOR: [REDACTED]
Deputy Director of Personnel for Special Programs

25X1A FROM: [REDACTED]
Office of General Counsel

SUBJECT: Agency Liability Associated with Physical Fitness
Rooms and Facilities

REFERENCE: Your memo dtd 7 Dec 76, Same Subj.

1. You have requested an opinion from this Office concerning the possible legal liability to the Agency for injuries suffered in the exercise facilities.

2. The Agency presently has two formally recognized exercise facilities in the Metropolitan area which have been provided in the interest of the physical fitness and well-being of Agency employees. The original exercise facility, located in the basement of the Headquarters Building, was initially established in order to provide for the conditioning of employees who have physically demanding official duties and those who are assigned to TDY standby status. Consideration was also given to the contributions made by an active exercise program to preventive health maintenance and of the need for limited forms of physical therapy. This facility is attended during normal duty hours by an employee of the Office of Personnel who supervises the activities in the room and maintains the equipment installed in the room. Equipment, furnishings and personnel costs of this exercise facility have been paid from appropriated funds since the facility opened in 1964. A second exercise facility has recently opened [REDACTED] and is under the general supervision of the Office of Logistics. This facility as yet has no assigned attendant, but it is planned that one will be placed there in the near future.

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3. The liability of the U.S. Government for injuries depends upon the status of the injured party at the time of the injury. If the individual is a Government employee and the injury is incurred while in the performance of his duty, the exclusive remedy is the Federal Employee's Compensation Act (FECA), 5 U.S.C. 751, et seq. If the individual is not a Government employee or is a Government employee but the injury occurred in a nonwork-related status, the claim may be cognizable under the Federal Tort Claims Act (FTCA), 28 U.S.C. 2671, et seq.

4. The general rule is that an injury sustained by a Government employee during normal duty hours falls within the purview of FECA. It is highly probable, given the above facts and generally liberal interpretation of the FECA, that an employee injured in the exercise facility even during non-working hours would fall within the coverage of FECA. Based on the case law, the following factors would be controlling in determining whether an injury (even one outside normal duty hours) occurred in the performance of duty: (1) the activity takes place on Agency premises; (2) Agency employees may use the facility during normal duty hours; (3) the facility is financed completely from appropriated Agency funds; (4) the facility is controlled and maintained during normal duty hours by an Agency employee; and, (5) the Agency could limit or halt the use of the facility at any time.

5. Injuries incurred by an employee which do not arise out of their employment are not compensable under the FECA. The proper remedy in such a case would be the FTCA. The FTCA provides that:

The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances (28 U.S.C. 2674)

... for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment (28 U.S.C. 2675)

It is arguable that an employee injured outside the normal duty hours in the exercise facility who is not allowed recovery under the FECA may be successful under the FTCA if it can be shown that an Agency employee was negligent in his duties and, thereby, caused the injury. Negligence is essentially the failure to exercise a certain standard of care. The U.S. Government has a legal responsibility to the user of Government premises to ensure that they are free from all inherent defects.

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6. Based on the facts presented, it would appear that the benefits of the FECA would be extended to an Agency employee injured while using Agency exercise facilities. Under the limited circumstances outlined above, the FTCA may be available to Agency employees injured while using Agency exercise facilities. The Employee's Compensation Appeals Board, Department of Labor, has agreed with the views expressed in this opinion.



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27 January 1977

NOTE TO: OGC File

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